[Cite as *State v. Sallee*, 2012-Ohio-3617.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio — Court of Appeals No. E-11-042

Appellee — Trial Court No. CRB 1100293

v.

Jacquelyn B. Sallee — **DECISION AND JUDGMENT**

Appellant — Decided: August 10, 2012

* * * * *

Terice A. Warncke, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Jacquelyn B. Sallee, appeals a judgment of the Sandusky Municipal Court of Erie County in which she was ordered to pay $100 for her conviction of disorderly conduct in violation of R.C. 2917.11, a minor misdemeanor. For the reasons that follow we reverse.

Facts and Procedural Background

{¶ 2} On February 4, 2011, appellant was cited for disorderly conduct in violation of R.C. 2917.11. Officer Tim Alexander, of the Sandusky Police Department, cited appellant following a disturbance at Dianna's Deli. Appellant's citation did not include the division or subsection of R.C. 2917.11 and contained only the words "disorderly conduct."

{¶ 3} On May 13, 2011, Officer Alexander testified at appellant's trial. According to Officer Alexander, the manager of the deli claimed appellant was in an oral confrontation with an employee. Even though Officer Alexander never saw appellant in the establishment, he observed appellant stumbling down the sidewalk a few stores away from the deli. It was at that time Officer Alexander issued the citation.

{¶ 4} Upon finding appellant guilty, the trial court ordered appellant to pay $100. While the judgment entry was silent as to how much of the $100 was for court costs and how much for fines, according to a later entry, appellant owed $92 in court fees and an $8 fine. A stay was granted and this appeal followed.

Assignments of Error

{¶ 5} Appellant now asserts the following three assignments of error:

1. THE CHARGING INSTRUMENT FAILED TO SET FORTH THE SECTION OF THE STATUTE UNDER WHICH APPELLANT WAS CHARGED, THUS SHE WAS DENIED DUE PROCESS OF THE LAW.

2. THE COURT INCORRECTLY ALLOWED OFFICER ALEXANDER TO TESTIFY ABOUT WHAT THE STORE MANAGER TOLD HIM BECAUSE THE MANAGER'S ALLEGED ORAL STATEMENTS WERE INADMISSIBLE HEARSAY & THEIR ADMISSION VIOLATED MS. SALLEE'S RIGHT TO CONFRONT HER ACCUSERS AS GUARANTEED BY THE UNITED STATES & OHIO CONSTITUTIONS.

3. THE COURT ABUSED ITS DISCRETION WHEN IT IMPOSED A NEAR MAXIMUM PENALTY UPON APPELLANT WITHOUT INQUIRING OF HER ABILITY TO PAY THE FINE.

II. Analysis

The charging instrument was a nullity

{¶ 6} In her first assignment of error, appellant argues that she was not properly charged with an offense where the complaint failed to describe the prohibited conduct or list the specific statutory violation.[1] In general, Crim.R. 3 provides, "The complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths."

[1] The state did not file a brief in this appeal.

{¶ 7} Similarly, R.C. 2935.26 provides that a citation for a minor misdemeanor shall include, inter alia, "[a] description of the offense and the numerical designation of the applicable statute or ordinance." *State v. Newell*, 6th Dist. No. E-08-064, 2009-Ohio-1816, ¶ 8.

{¶ 8} The purpose of the complaint is to inform the accused of the elements of the crime being charged. *State v. Echemendia*, 6th Dist. No. OT-95-059, 1996 WL 475994, *1 (Aug. 23, 1996). "A complaint that does not contain every element does not charge an offense and is void for subject matter jurisdiction." *Id.* at *2, quoting *Cincinnati v. Gardner*, 61 Ohio Misc.2d 552, 554, 580 N.E.3d 545 (M.C.1991). A complaint is deemed sufficient if an "individual of ordinary intelligence would not have to guess as to the type and scope of the conduct prohibited." *State v. Baker*, 6th Dist. No. H-98-033, 1999 WL 75999, *1 (Feb. 19, 1999), citing *People v. Taravella*, 133 Mich.App. 515, 522, 350 N.W.2d 780 (1984).

{¶ 9} In the instant case, the officer issued a summons and complaint charging appellant with a violation of R.C. 2917.11. The complaint, on the "describe offense" line stated, "disorderly conduct," and alleged that appellant violated "section no. 2917.11."

{¶ 10} The disorderly conduct statute, R.C. 2917.11, prohibits a wide variety of conduct, and provides, in relevant part:

> (A) No person shall recklessly cause inconvenience, annoyance, or alarm to another by doing any of the following:

(1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;

(2) Making unreasonable noise or an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person;

(3) Insulting, taunting, or challenging another, under circumstances in which that conduct is likely to provoke a violent response;

(4) Hindering or preventing the movement of persons on a public street, road, highway, or right-of-way, or to, from, within, or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender;

(5) Creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any act that serves no lawful and reasonable purpose of the offender.

(B) No person, while voluntarily intoxicated, shall do either of the following:

(1) In a public place or in the presence of two or more persons, engage in conduct likely to be offensive or to cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities, which conduct the offender, if the offender were not intoxicated, should know is likely to have that effect on others;

(2) Engage in conduct or create a condition that presents a risk of physical harm to the offender or another, or to the property of another.

(C) Violation of any statute or ordinance of which an element is operating a motor vehicle, locomotive, watercraft, aircraft, or other vehicle while under the influence of alcohol or any drug of abuse, is not a violation of division (B) of this section.

(D) If a person appears to an ordinary observer to be intoxicated, it is probable cause to believe that person is voluntarily intoxicated for purposes of division (B) of this section.

(E)(1) Whoever violates this section is guilty of disorderly conduct.

{¶ 11} Without the division, subsection, or a description of the prohibited conduct, appellant was not properly notified of the charges against her. *See Newell*, 6th Dist. No. E-08-064, 2009-Ohio-1816, at ¶ 25 (complaint charging defendant which stated only "disorderly conduct (MM)" and violated "section no. 2917.11" was insufficient, and a nullity, because it did not describe the prohibited conduct or list the specific statutory violation). *See also Echemendia*, 6th Dist. No. OT-95-059, 1996 WL 475994, at *2 (instrument alleging violation of R.C. 2917.11(A) with no statutory subsection or description of prohibited conduct is insufficient because "[n]ot designating or implying the specific subsection leaves a material element to conjecture").

{¶ 12} Additionally, in *Newell*, we determined that even if a defendant pleads not guilty to a defective complaint she has not waived her constitutional right to the nature of the charges accused against her. *Newell*, 6th Dist. No. E-08-064, 2009-Ohio-1816, at ¶ 24. A valid complaint must be filed in order to vest a court with subject-matter jurisdiction. *City of Newburgh Heights v. Hood*, 8th Dist No. 84001, 2004-Ohio-4236, ¶ 5.

{¶ 13} Because the complaint charging appellant with disorderly conduct failed to provide her with reasonable notice of the offense, it was insufficient and therefore a nullity. Accordingly, appellant's first assignment of error is well-taken.

{¶ 14} Due to our ruling on appellant's first assignment of error, appellant's remaining two assignments of error regarding hearsay and her sentence are moot. App.R. 12(A)(1)(c).

III. Conclusion

{¶ 15} The judgment of the Sandusky Municipal Court is reversed and final judgment is hereby rendered for appellant. Pursuant to App.R. 24, appellee is ordered to pay the costs of this appeal.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

_____
JUDGE

Thomas J. Osowik, J.

_____
JUDGE

Stephen A. Yarbrough, J.
CONCUR.

_____
JUDGE